**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL MISC.APPLICATION No. 741 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**SURESH ALIAS SUKHO JAGDISHBHAIKOLI PATEL - Applicant(s)**
**Versus**
**POLICE INSPECTOR & 1 - Respondent(s)**

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**Appearance :**
MR ADIL R MIRZA for Applicant(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR KODEKAR, ADDL PUBLIC PROSECUTOR for Respondent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 31/07/2007**

**ORAL JUDGMENT**

By way of this application u/s 482 of Criminal Procedure Code, the applicant has prayed to quash and set aside the impugned FIR being C.R. No. III 5023/2007 filed before Valsad Rural Police Station for the offence

punishable u/s 66(1)(B),65A,E,81 and 116(1)(B) of the Bombay Prohibition Act, 1949.

Shri Mirza, learned advocate appearing on behalf of the applicant has submitted that except the statement of the driver i.e. the accused, the applicant is sought to be arraigned and except the statement of the driver of the another vehicle, who is the accused in another complaint, there is no other material and/or evidence against the applicant and therefore, the impugned complaints/FIR requires to be quashed and set aside. He has relied upon section 25 of the Indian Evidence Act as well as section 161 of Criminal Procedure Code and has submitted that the statement of the co-accused is inadmissible in evidence and therefore, the impugned complaints/FIR requires to be quashed and set aside.

This Court has elaborately considered the above submission and the prayer of the other accused to quash the complaints/FIR solely on the ground that except the statement of the co-accused, there is no other material and/or evidence and therefore, the FIR is to be quashed and set aside, is negatived by this Court by judgment and order rendered in Criminal Misc. Application No.1509 of 2007 and allied matters. This Court has relied upon the decision of the Hon'ble Supreme Court in the case of **Mohd. Malek Mondal V. Pranjal Bardalai and another reported in 2005(10) SCC 608** and considering the same, this Court has held that at the initial stage of investigation, the said ground is not required to be considered and on that ground that except the statement of the co-accused, there is no other material and/or evidence and therefore, the complaint is to be quashed and set aside, has been negatived by this Court by holding that at the initial stage, the same is not

required to be considered, more particularly, when the accused are still to be interrogated.

It is required to be noted that the driver/accused in another complaint has given the statement, which is recorded in the complaint to the effect that large quantity of liquor is being transported in the vehicle which is coming behind, in which the name of the applicant is disclosed. It is also required to be noted that the driver of the present complaint has also absconded. Thus, the statement of the driver of another vehicle can be said to be the basis for initiation of investigation against the applicant, as he has disclosed the the name and unless and until, the investigation is completed and the petitioner is interrogated, at this stage, it cannot be said that as there is a statement of the driver in another complaint only and therefore, the complaint/FIR is to be quashed and set aside, as it was held by the Hon'ble Supreme Court in the aforesaid case, the said aspect is not required to be considered at the initial stage of investigation.

Under the circumstances and for the reasons stated in the judgment and order rendered in Criminal Misc. Application No.1509 of 2007, this application is also required to be dismissed and is accordingly dismissed. Rule discharged. Ad interim relief granted earlier stands vacated forthwith.

(M.R. Shah, J.)

shekhar/-